

**REMARKS**

Applicants respectfully request reconsideration of the instant application in view of the following remarks. Claims 122-160 are pending in the application. Claims 122, 135, 136, 142, 148, 149, and 155 are independent claims. No amendment has been made to the claims in this response. No new claims and no new matter have been added.

**Rejections under 35 USC §103**

The Examiner has rejected each of the pending independent claims under § 103. In one rejection, the Examiner has asserted that the claims are unpatentable in view of the Business Wire article, US Patent Number 6,243,691 to Fischer (the “Fisher patent”) and US Patent Number 5,077,665 to Silverman (the “Silverman patent”). In another rejection of the independent claims, the Examiner has assert that the claims are unpatentable in view of US Patent Number 5,794,219 to Brown (the “Brown patent”), US Patent Number 6,243,691 to Fisher and US Patent Number 5,077,665 to Silverman (the “Silverman patent”). Additional references are cited to address additional features of the dependent claims. Applicants respectfully submit the cited references fail to disclose or suggest each of the limitations of the pending claims.

The Business Wire article describes a system (“ONSALE”) in which a consumer may browse specific seller inventory, and participate in an auction of a seller’s goods. According to the article,

ONSALE’s merchandise will be sold using one of three interactive formats: standard auctions, dutch auctions and markdowns. In a standard auction, an item is

placed onsale for a fixed time period and sold to the highest bidder. Dutch auctions occur when a number of identical articles are offered for sale at the same time period. The highest bidders purchase the available inventory at the lowest successful bidder's price. ONSALE's markdown merchandise decreases in price in time intervals. Customers can buy markdown items at the current posted price, or can wait until the next time interval, which may be hours or days, when the offering price goes down.

The Brown patent is directed to a method of conducting an on-line auction with bid pooling. Individual bidders pool their bids during a bidding session. Each of several bidding groups are registered with a central computer. Each bidding group has a total bid for an item being auctioned. The bidding group with the largest total bid wins the item being auctioned.

As such, the Business Wire article and the Brown patent are directed to arrangements in which a specific good (or a plurality of the same good) from a specific seller is auctioned to the highest bidder. In stark contrast thereto, each of the independent claims of the instant application is directed to a system whereby a conditional purchase offer for goods or services is compared with seller inventory and pricing information from a plurality of sellers of the goods or services. Such an arrangement is simply not disclosed or suggested by any of the cited references.

The Examiner has acknowledged that the primary cited references (the Business Wire Article and the Brown patent) fail to disclose or suggest a plurality of sellers of the goods or services, but relies upon the teachings of the Fisher and Silverman patents for this feature, among

other features. Applicants respectfully submit that the instant rejections involve the use of impermissible hindsight to arrive at Applicants' claimed invention. The instant 103 rejections involve the combination of various elements of at least three (and sometimes more) references to arrive at Applicants' claimed invention. In particular, the office action combines features of standard auction systems and securities trading systems to concoct a new system not contemplated before Applicants' instant application.

Applicants note that the aforementioned differences between the claimed invention and the cited references should be readily apparent – in view of the fact that the cited references are simply not directed to a system designed to facilitate buyer-driven conditional purchase offers. Rather, various cited references are merely directed to standard auction techniques for auctioning a particular good or group of goods from one seller. Applicants' claimed invention is simply not directed to such a standard auction system. Rather, Applicants' claimed invention is directed to a system whereby a conditional purchase offer for goods or services and a payment identifier are received from a customer, and then compared to seller inventory and pricing information of a plurality of sellers of the goods or services to determine if the offer is acceptable. Such a buyer-driven system is simply never contemplated in the cited references.

As such, the claimed invention is clearly patentably distinct from the cited references for at least this reason, among others.

Applicants further note that the independent claims of the instant application are embodied in a tremendously successful commercial enterprise known as priceline.com (the "Company"). Since the filing of the original application, the Company has received millions of conditional purchase offers for a variety of goods and services. Applicants respectfully submit that

this evidence of commercial success further highlights the non-obviousness of Applicants' claimed invention.

In view of the fact that each of the independent claims of the instant application are distinguishable from the cited references for the aforementioned reasons, Applicants note that the dependent claims of the instant application are also distinguishable for at least these reasons.

Applicants further note however that the instant office action fails to address the additional limitation set-forth in independent claim 155, in which an acceptance is provided to a customer without an indication of amounts paid to a seller for said goods or services, and payment is provided to a seller for an amount less than and independent of said offer price. Applicants respectfully submit that independent claim 155 and all claims dependent thereon are also allowable for this additional reason.

In view of the aforementioned remarks, Applicants respectfully submit that all of the claims now pending in the application (claims 122-160) are in condition for allowance, which action is earnestly solicited.

If any issues are apparent, or if the Examiner has any suggestions to expedite prosecution, he is invited to contact the undersigned at the telephone number below.

#### **AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for this amendment, or credit any overpayment to Deposit Account 13-4500, Order No. 3553-4010US4.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 13-4500, Order No. 3553-4010US4. A DUPLICATE OF THIS DOCUMENT IS ATTACHED.

**CONCLUSION**

It is now believed that all pending claims are in condition for allowance. In view of the amendment and remarks, an early and favorable reconsideration is respectfully requested.

Respectfully submitted,

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